Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
Implementation of Sections 11	)	
and 13 of the Cable Television	)	
Consumer Protection and Competition	)	MM Docket No. 92-264
Act of 1992	)	
	)	
Horizontal and Vertical Ownership	)	
Limits, Cross-Ownership Limitations	)	
and Anti-Trafficking Provisions	)	

REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits these reply comments on the Commission's Notice of Proposed Rulemaking and Notice of Inquiry, released December 28, 1992. The Commission granted an extension of time for the filing of reply comments on certain issues in this proceeding, by Order released February 26, 1993. USTA is filing these reply comments on the original due date. USTA did not file comments.

The purpose of these reply comments is to address a significant underlying issue that runs across a number of pending Commission proceedings, including this proceeding, insofar as the Commission seeks to implement rules that govern cross-interests involving cable television, broadcast, common carrier and new technology businesses. Such rules must be consistent and grounded in reasoned decisionmaking.

In their comments in this proceeding, a significant number of commenters who addressed the issue emphasized that the

Commission should use transfer of control standards that rely, not on some attributable interest, but transfer of "actual working control". Comments of InterMedia at 2; Cole, Raywid and Braverman at 3-4; Discovery Communications at 19. See also Comments of NATOA at 8-10, Time Warner Entertainment Co., L.P. (Fleischman and Walsh version) at 10 (Commission should recognize that an "attribution of interest" standard is less than the required threshold of "control"); Time Warner Entertainment Co., L.P. (Cravath, Swaine and Moore version) at 37 (focus on "control".)

Commenters point out that the Commission should apply the same rule here that it does with its other cross-interest and control rules. Comments of Turner Network Television at 19; Cablevision Industries at 7; BellSouth at 2 (use the same standard here as for similar questions of attribution and ownership with video dialtone.) See also GTE at 3-4 (pointing out that cable operator power in local video distribution rivals or exceeds that of exchange carriers in narrowband service, and citing comments of Viacom International in MM Docket No. 92-265, at 56-57, to that effect as well.)[1]

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[1] Contrast TCI at 13 (TCI claims a 10% interest should be de minimus, and that higher percentages can be acceptable.) TCI's threshold limit is still double that which was adopted by the Commission in its video dialtone rules for determining "control" by even a small exchange carrier of an otherwise unaffiliated programming entity using its network. See Second Report and Order, Amendment of Sections 63.54-58 of the Commission's Rules, CC Docket No. 87-266, 7 FCC Rcd 5781 (1992)

USTA agrees that a common framework should prevail. Assuming that the Commission believes rules are necessary as a prophylactic measure related to businesses that are involved in both networking and programming, those rules should be equally applied to all network providers.[2]

A Commission that is anchored squarely in the middle of a rapidly-evolving communications industry should keep its eye trained on the fundamentals in assessing its role. Congress has found that the cable industry is a monopoly, that it has "undue market power", that it is "highly concentrated", and that "cable operators have the incentive and ability to favor their affiliated programmers." Cable Television Consumer Protection and Competition Act of 1992 at section 2(a)(2)-(5).[3] These conclusions should further drive the Commission to assure that

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[2] That one network provider is subject to pervasive Title II regulation and one is not suggests, if anything, that the Title II regulatee should be subject to less stringent rules, because of the existence of the nondiscrimination and other safeguards of Title II that address any concern about market power in the network part of the business, safeguards that are still absent with network providers not covered by Title II.

Rep. Edward J. Markey (D-MA), chairman of the House Telecommunications Subcommittee, addressed this issue in a speech on February 16, 1993, in Washington. He has taken the position that "the nondiscriminatory principle embedded in the common carrier concept should apply" to cable system operators because the number of channels they can offer is growing. Speech to USTA Conference, February 16, 1993 at 7.

[3] See also Comments of INTV at 2 ("At its core, the problem with concentration in the cable industry stems from its monopoly position in each local cable community. Cable is the sole gatekeeper.")

any rules it adopts are in balance. Parity on the issues identified in this proceeding is appropriate for all similarly-situated network providers. Any rule applicable to "cable operator-cable programming" combinations should use the same "control" and "attribution" thresholds that will be applicable to other networkers when they become First Amendment speakers, too.

As a side issue, the Commission should not be distracted by one commenter's suggestion that video dialtone carriers might "run away" with the cable market in the near future unless the Commission gives established multiple system operators wide room to consolidate their regional power even further. Comments of Continental Cablevision at 18-19. The Commission should step back and compare the number and size of video dialtone proposals before it with its existing files on cable operators. This comparison will show how small the video dialtone "threat" is, and how irrational it would be to assume that existing monopoly cable operators have any real concern here, other than simply avoiding public accountability.

Respectfully submitted,

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March 3, 1993

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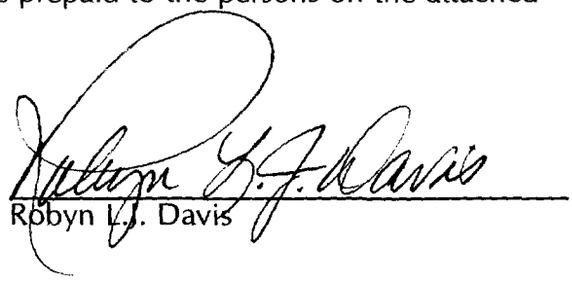
CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on March 3, 1993 copies of the foregoing Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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